Alberta Women's Bureau
INFORMATION

THE ILLEGITIMATE CHILD

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1402 Centennial Building, 10015-103 Avenue, Edmonton, Alberta T5J-OH1
Telephone: 403/427-2470

Alberta
WOMEN'S BUREAU

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WHO IS AN ILLEGITIMATE CHILD?

A child born in Alberta today enjoys one of two legal statuses. A "legitimate" child is born to a woman married to his or her father. An "illegitimate" child is born to a woman who is single, or married to someone other than the child's father.

According to statistics supplied by the Department of Social Services and Community Health, there were 3,411 illegitimate births in Alberta in 1974. Only 588 of these children were surrendered for adoption. The legal status of the majority of illegitimate children who remained with their natural parents is discussed below.

THE LEGAL MEANING OF ILLEGITIMACY

Until a court order is made giving the father of an illegitimate child joint guardianship with the mother, only the mother is the child's legal guardian. The problems that result in the latter situation are described below.

Surname

The child will take the mother's surname. The mother is forbidden to change her surname and her child's to that of the father. However, if the mother and the father jointly make a written request to the Division of Vital statistics, the child may take the father's surname, or the father's surname hyphenated or combined with the mother's surname.

Custody and Support

As guardian, the mother is responsible for the custody, care and education of the child, and may determine the child's religion. There are some exceptions to this principle.

If the child's parents are living together in a common law union, the Family Court may cause the father to support the child until that child is sixteen. For purposes of The School Act, a father may be a "parent" when he completely maintains or supports and controls the child.

Adoption and Marriage

The mother of the child alone may voluntarily surrender custody of her child for adoption and give her consent to the adoption of her child by a stranger. Should the mother marry someone other than the child's father, only the mother's consent is required for the adoption of the child by the mother's new spouse. Furthermore, only the child's mother may consent to the marriage of the child who is under eighteen years of age.

Inheritance

An illegitimate child shares in the deceased mother's estate as if he/she were legitimate. The child may claim benefits from the deceased father's estate, if he dies without leaving a will, only if he left no legal heirs and has made a recognition of paternity during his lifetime. If the deceased father left a will, it must clearly include the illegitimate child if he/she is to have a claim to the estate. However, an application for a greater share in the estate of a deceased father who left a will may be brought on behalf of the child if the child has been acknowledged as a child of the deceased and is not adequately provided for under the will.

SUPPORT FOR AN ILLEGITIMATE CHILD

The father of an illegitimate child may be required to help support the mother of his child during the last three months of pregnancy, and the child until the age of sixteen should the mother wish to enforce these statutory obligations. The support may take the form of monthly payments or a lump sum settlement as agreed upon between the mother and father alone, through their legal counsel, or through the Department of Social Services and Community Health. (The latter service is free, and the agreement is enforceable).

If the father does not voluntarily admit to being the child's father, the mother may make an application for support through her legal counsel or through the Department of Social Services and Community Health. The application must be made:

1) within 24 months of the child's birth, or
2) 12 months after the father indicated by some act (see below) that he is the natural father, or
3) 12 months after the father returns to the province if he has been away since the expiration of the period of 24 months from the child's birth.

The act acknowledging parenthood referred to above may include:

1) the father admitting to being the child's natural parent in the birth registration documents, or
2) evidence by others that the alleged father had sexual intercourse with the mother approximately nine months before the child's birth, or
3) evidence that the father told others he was the child's parent.

Such evidence is necessary before a court will grant what is known as an affiliation order for the child's maintenance. Where the father fails to make payments as directed by the affiliation order, he may be subjected to a fine or a term of imprisonment, and his wages may be garnisheed. The father's obligation under the affiliation order or support agreement would end if the mother married.

RIGHTS OF THE ILLEGITIMATE CHILD'S FATHER

Because the mother of the illegitimate child is the sole legal guardian of her child, the father does not have the right of access to, or custody of, the child. If he wishes either the right to visit the child or the right to have the care and control of the child, he must make an application to the court. In order to be granted either of these rights, the father must prove that it is in the best interests of the child to visit or live with him. Such a standard is difficult to meet, especially when the father has had no contact with his child for a long period of time.

Nevertheless, a court will consider a natural father's application for access or custody.

FROM ILLEGITIMATE TO LEGITIMATE

An illegitimate child becomes legitimate in any one of three ways. Once the procedure is completed, the child is considered to be legitimate from birth, and the birth certificate is altered.

1) A child becomes legitimate upon the legal marriage of his/her natural parents.

2) A child may be given up for adoption by the mother and adopted by strangers. Once adopted, the child is said to be the legitimate child of these parents from birth.

3) The mother of the illegitimate child may marry a man other than the child's natural father. The mother's husband may then make an application to adopt the child so as to have joint guardianship of the child with the child's natural mother.

Applications for adoption are processed by the Department of Social Services and Community Health. At present, there is no charge for these services.

POSSIBLE NEW STATUS FOR THE ILLEGITIMATE CHILD

In 1976, the Institute of Law Research and Reform proposed that the Alberta government pass a Status of Children Act that would make a number of changes in the status of illegitimate children. For more detailed information on the proposed changes contact:

The Institute of Law Research & Reform
402 Law Centre
The University of Alberta
EDMONTON, Alberta
T6G 2E1
Telephone: 432-3374

FOR FURTHER HELP

Staff at offices of the Department of Social Services and Community Health will answer your questions in greater detail. Consult your local telephone directory for the office nearest you or write:

11713 - 82 Street
EDMONTON, Alberta
T5B 2V9
Telephone: 474-6424

Alberta Place, 4th Floor
1520 Fourth Street S.W.
CALGARY, Alberta
T2R 1H5
Telephone: 261-7111

Division of Vital Statistics
4th Floor
10405 - 100 Avenue
EDMONTON, Alberta
T5J OA6
Telephone: 427-2681

Division of Vital Statistics
620 Seventh Avenue S.W.
CALGARY, Alberta
T2P OY8
Telephone: 261-6431

You may telephone these and any other offices of the Alberta government toll-free by dialing your local R.I.T.E. (Regional Information Telephone Enquiry) number.

Legal Aid Society of Alberta, at any of the locations listed below, will assist in providing a lawyer for you if you need one and cannot afford to pay.

401 Melton Building
10310 Jasper Avenue
EDMONTON, Alberta
T5J 2N4
Telephone: 427-7575

Main Floor Rocky Mountain Plaza
100, 615 Macleod Trail S.E.
CALGARY, Alberta
T2G 4T8
Telephone: 261-2260

Other offices are located at the Court House in the following centres:

Drumheller
Fort Macleod
Grande Prairie
Hanna
Lethbridge
Medicine Hat
Peace River
Red Deer
Vegreville
Wetaskiwin

You can also obtain help through:

Student Legal Assistance (Calgary)
Room 595 Bio-Science Building
University of Calgary
CALGARY, Alberta
T2N 1N4

Telephone: 284-6637

Student Legal Services
Law Centre
The University of Alberta
EDMONTON, Alberta
T6G 2H5

Telephone: 432-2226

Finally, if you can afford to pay for legal counsel, Lawyer Referral Service will provide the names of lawyers in your community who practise Family Law.

Lawyer Referral Service
611 Fourth Street, S.W.
CALGARY, Alberta
T2P 1T5

Telephone callers have access to In-W.A.T.S. by dialing 1-800-332-1110; Calgary callers use 263-5988.